



OFFICE OF  
INSURANCE COMMISSIONER

TECHNICAL ASSISTANCE ADVISORY

T 06-04

**TO:** All Washington Licensed Property and Casualty Brokers  
**SUBJECT:** Property and Casualty Broker Compensation Disclosure  
**DATE:** August 10, 2006

A previous advisory issued on October 21, 2004 dealt with the duties and responsibilities of Washington-licensed property and casualty brokers concerning disclosure of compensation to customers. This office conducted an investigation of broker business practices since issuance of the advisory and it is apparent that additional guidance is necessary to assist brokers in understanding the regulatory requirements relating to disclosure of compensation.

RCW 48.17.270 limits the compensation that may be accepted by an insurance agent licensed as a broker in property and casualty insurance transactions, other than surplus line business, to (1) commissions paid by the insurer, (2) fees paid by the insured, or (3) a combination of both. In connection with placing surplus line business, a surplus line broker may compensate an agent or broker. In addition, the full amount of the compensation received by an agent as a result of a property or casualty insurance transaction must be disclosed to the customer where the agent:

- is also licensed as a broker; and
- receives a fee; and
- deals directly with the customer.

The disclosure must be in writing and signed by both the agent-broker and the customer and must be retained for not less than five years.

Disclosure must be provided to the customer before a final product decision is made. Disclosure after the purchase defeats the purpose of the requirements: to inform the customer of potential incentives to the agent-broker in recommending that the customer's business be placed with a particular carrier or include a particular coverage or coverages.

The term "full amount of the compensation" used by the legislature in RCW 48.17.270 includes contingent compensation arrangements, sometimes called "contingent commissions." Determining what to disclose may present a challenge where the amount of a contingent commission is not known at the time disclosure is required. Simply stated, the disclosure should make the customer aware of the factors and methodology used that affect the agent-broker's compensation. While it is not necessary to provide esoteric mathematical formulas, the appropriate disclosure is still required. If an agent-broker is unable to provide the amount of compensation on a particular placement, the agent-broker may be able to satisfy the requirement by describing the terms of the arrangement or by providing specific information about compensation from the past year and any anticipated changes or range of possible outcomes for the current period. For each company used in any proposal with which the agent-broker has an arrangement, the disclosure should include a

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description of the particular arrangement.

Compensation that may be affected by the transaction in question must be disclosed. That is, if a particular transaction may contribute in some way to triggering an award under a contingent compensation arrangement, disclosure is required. Compensation that has no relationship to the transaction is not required to be disclosed.

The requirements for disclosure of contingent commissions may be met by use of language substantially similar to the following illustration where "X" represents a variable number:

We have an agreement with [*insurance company*] that we are proposing for your insurance that may pay us future additional compensation. This type of compensation is in addition to any fees and/or commissions that we have agreed to accept for servicing your insurance needs. This compensation, generally known as profit-sharing, is based on formulas that consider the volume of business placed with the company, the profitability of that business, how much of the business is retained for the company's account each year, and other factors. The agreement considers total eligible coverage from all clients placed during a calendar year and any profit-sharing payment is usually received [*specify time period such as "in the second calendar quarter of the following year"*]. Because of variables in this program, we have no effective way at this time to determine the amount of any additional compensation that might be attributable to the coverage we are proposing for your insurance. Over the past several years, profit-sharing compensation received from [*insurance company*] has ranged from X% to X% of total premiums placed with [*insurance company*]. We will gladly furnish you any further specific information that you might require to assist you in making an informed decision about [*insurance company*] that we are proposing to provide your coverage.

Some examples of disclosures that without more do not satisfy the requirements for disclosure of contingent arrangements follow:

- We may also receive annual contingent compensation from one or more of the insurance companies we have used in this proposal. This is standard with most companies and requires us to have a good overall loss ratio with the company and meet certain other criteria.
- We receive a commission of \_\_% from the insurance company. A year-end bonus may also be received from the insurance company if an acceptable loss ratio for all clients and certain other guidelines are met.
- In addition, there is a possibility that your account may contribute to contingent commissions received by us at a later date. Contingent commissions are based on contractual incentives we have with some insurance carriers and vary from company to company.

The standard to which agents that are also licensed as brokers should adhere is stated in T 04-05 and merits restatement here: "[A]ll compensation arrangements [should be disclosed] in a sufficiently complete and understandable form so the insured is able to understand and consider possible incentives to their broker in placing the business and the costs of coverage." To this should be added: "When in doubt, disclose."

If you have questions regarding this Technical Assistance Advisory you may contact Mike Huske at 360-725-7261 or [MikeH@oic.wa.gov](mailto:MikeH@oic.wa.gov).